



ATTORNEY DOCKET NO.:
019143.0272

05-09-03

PATENT APPLICATION
09/110,1035

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Appeal brief
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5-15-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael C. Powers, et al.
Serial No.: 09/110,103
Filing Date: July 1, 1998
Group Art Unit: 3623
Examiner: M. Irshadullah
Title: SYSTEM AND METHOD FOR IMPORTING
PERFORMANCE DATA INTO A PERFORMANCE
EVALUATION SYSTEM

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GROUP 3600

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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I hereby certify that the attached Appeal Brief (14 pages), with Appendices A, B, and C, a Baker Botts L.L.P. return receipt postcard (1 card), check in the amount of \$320.00, and this Certificate of Mailing are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on this 7th day of May 2003, and is addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**APPEAL FROM THE EXAMINER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Michael C. Powers, et al.
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Alexandria, VA 22313-1450

Dear Sir:

APPEAL BRIEF

Applicants appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner mailed October 16, 2002 finally rejecting Claims 1-17 in the above-identified patent application. Applicants filed a Notice of Appeal on March 17, 2003. This Appeal Brief is being filed pursuant to the provisions of 37 C.F.R. § 1.192. Applicants respectfully submit herewith this Appeal Brief, in triplicate, and a check in the amount of \$320.00 to cover the statutory filing fee.

REAL PARTY IN INTEREST

The present application was assigned to e-talk Corporation, as indicated by the assignment from the inventors to Teknekron Infoswitch Corporation recorded September 28, 1998 in the Assignment Records of the United States Patent and Trademark Office at Reel 009495, Frame 0106 and, subsequently, from Teknekron Infoswitch Corporation to e-talk Corporation recorded April 10, 2000 in the Assignment Records of the United States Patent and Trademark Office at Reel 010736, Frame 0860.

RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Claims 1-17 stand rejected pursuant to a Final Office Action mailed October 16, 2002. Claims 1-17 are all presented for appeal.

STATUS OF RESPONSES

Applicants filed a Response Pursuant to 37 C.F.R. §1.111 on August 17, 2000 in response to an Office Action dated April 17, 2000 ("First Office Action"). The Examiner finally rejected Claims 1-16 in a First Final Office Action dated November 22, 2000 ("First Final Office Action") and Applicants filed a Request for Continued Examination Pursuant to 37 C.F.R. §1.116 on May 22, 2001. Applicants filed a Response Pursuant to 37 C.F.R. §1.111 on November 16, 2001 in response to a Second Office Action dated July 17, 2001 ("Second Office Action"). The Examiner finally rejected Claims 1-17 in a Second Final Office Action dated April 25, 2002 ("Second Final Office Action") and Applicants filed a Response Pursuant to 37 C.F.R. §1.116 on September 11, 2002. The Examiner finally rejected Claims 1-17 in a Third Final Office Action dated October 16, 2002 ("Third Final Office Action") and Applicants filed a Response Pursuant to 37 C.F.R. §1.116 on January 10, 2003. Applicants filed a Notice of Appeal on March 17, 2003 in response to an Advisory Action mailed February 19, 2003 ("Advisory Action"). Consequently, the claims which are on appeal, and which appear in Appendix A of this Appeal Brief, represent the form of the claims as of the time the Third Final Office Action was issued on October 16, 2002.

SUMMARY OF INVENTION

Referring to FIGURE 1, the performance evaluation system 10 is deployed on a three-tiered architecture. The three-tiered architecture includes client space 12, server application space 14 and database space 16. The client space 12 is implemented on a client platform 18 such as a work station, personal computer or other device capable of communicating between a user and a server. The server application and database spaces 14 and 16 are implemented on a server platform 20 such as a personal computer or other device capable of being remotely accessed over a network 22. Generally, the performance evaluation system 10 uses productivity and quality data to evaluate the performance of an individual, group, process or other suitable type of item or operation. The web-base architecture of the performance evaluation system 10 allows performance evaluation methodology to be standardized throughout an enterprise. In addition, users can take advantage of the Internet or other networks to remotely access the performance evaluation system and complete member evaluations.

The server application space 14 includes a server engine 40, business objects 42, reports 44, charts 46, and a data importer 48. The server engine 42 further includes active server pages (ASP) 50 that include server-side components and scripting. The server-side components are specialized Active X components executed prior to delivery of web pages to the client space 12. The server-side scripting accesses the interfaces of the server-side components. Use of the active server pages 50 allows the web pages to be updated in response to changing system and database settings.

The data importer 48 imports productivity data from external sources such as a telephony switch. The data importer 48 includes preprocessors 52 and a work area 54. The preprocessors 52 are tools used to create an instruction file for interpreting the information in a data file. The instruction files are operable to parse data files. The performance evaluation system 10 can be configured to import any type of suitable data file 56 from an external device 58. The preprocessors 52 create a delimited file 60 from a data file 56. In the delimited file 60, columns of data are each separated by a delimiter character such as a comma, hyphen, colon, and the like. The delimiter acts as reference point telling the data importer 48 where one column of data stops and a new column starts. If the data file 56 is already in a delimited format, a preprocessor 52 is not used. The delimited file 60 is a temporary file stored in the work area 54. As described in more detail below, the delimited

file 60 is moved to the database space 16 and the productivity data mapped into the database based on the configuration defined in the database. Accordingly, the evaluation process is streamlined by having data in a central location for analysis.

The database space 16 includes a database manager 70 and a database 72. The database 72 includes organization tables 82, privileges tables 84, plans tables 86, data import tables 88, productivity tables 90, evaluation tables 92 and filter tables 94. The data import tables 88 store configurations for importing productivity data into the performance evaluation system 10. The data import tables 88 import productivity data into the performance evaluation system 10 from external devices and automatically insert it into the production table. As a result, the evaluation process is streamlined by having data in a centralized location for data analysis. Referring to FIGURE 7, the data import tables 88 include configuration tables 170, an import template assignment table 172, and an import template table 174. Each configuration table 170 provides information for identifying and mapping data from the delimited file 60 to the productivity table 90.

The configuration table 170 includes a first field identifying a column in the delimited file 60 containing a data item corresponding to a data element, a second field identifying a data name, a third field identifying a data type, a fourth field identifying a data format, and a fifth field mapping the data item to the data element in the productivity table 90. In a particular embodiment, the data types include identity, date, duration and numeric types. An identity column provides identifying information such as a name or code. The date column provides the date of the information. The duration column shows an amount of time for the information. A numeric column contains a value.

The import template assignment table 172 assigns an import template to a configuration. In the import template assignment table 172, a first field identifies the configuration by a configuration ID and a second field identifies the import template by an import template ID. The configuration and import template IDs may be any suitable identifiers operable to uniquely identify the configurations and import templates, respectively. Use of the import templates allows a process for imported data to be defined and reused for any number of configurations. Accordingly, the performance evaluation system 10 is more efficiently configured and administration cost is reduced. The import template table 174 specifies preprocessor and other information for importing the data file 56. The import template table 174 includes a first field identifying the import templates by the

import template IDs. A second field identifies a preprocessor, if any, to be applied to the data file 56 to generate the delimited file 60. A third field identifies the delimiter used in the delimited file 60.

In one aspect of operation, productivity data is imported by selecting a configuration, selecting users to determine how the data will be applied (members assigned to selected users receive the productivity data), specifying how the date will be determined, selecting the data file 56 to import by selecting a drive and the file name, specifying how to match productivity data to members (by name or code), and selecting whether or not to replace existing productivity information. In response to the import request, the data importer 48 retrieves the requested data file 56 and if the import template associated with the configuration requests a preprocessor 52, applies the preprocessor 52. Using the delimiter information in the import template for the configuration and the mapping information in the configuration table, the data importer 48 inserts the productivity data into the productivity tables 90 for members in the user's view.

STATEMENT OF THE ISSUES

Are Claims 1-17 unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 5,909,669 issued to Havens ("Havens") and in view of U.S. Patent No. 4,276,451 issued to Beebe et al. ("Beebe")?

GROUPING OF CLAIMS

Pursuant to 37 C.F.R. §1.192(c)(7), Applicants state that Claims 1-17 do not stand or fall together. Applicants request that Claims 1-17 be grouped as follows for purposes of this appeal:

1. Group 1: Claims 1-5, 7-13, and 15-17. (Claim 1 will be addressed below and Claims 2-5, 7-13, and 15-17 may be deemed to stand or fall with Claim 1).
2. Group 2: Claims 6 and 14. (Claim 6 will be addressed below and Claim 14 may be deemed to stand or fall with Claim 6).

ARGUMENT**A. Legal Standard – Obviousness**

The Examiner maintains that claims 1-17 are obvious in view of the cited references. The determination of whether an invention is obvious in view of prior art considers “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.” 35 U.S.C. § 103 (emphasis added). The fact that a prior art device could be modified so as to produce the claimed invention is not a basis for an obviousness rejection unless the prior art suggested the desirability of such a modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. *Carella v. Starlight Archery*, 804 F.2d 135, 231 U.S.P.Q. 644 (Fed. Cir. 1986). In addition, “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); (M.P.E.P. § 2141.02). Moreover, if a “proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” (MPEP §2143.01).

In approaching this determination, a number of inquiries are made as primary considerations: (1) the scope and content of the prior art are determined; (2) the differences between the prior art and the claims at issue are ascertained; and (3) the level of ordinary skill in the pertinent art is resolved. *Graham v. John Deere Company*, 383 U.S. 1, 16, 148 U.S.P.Q. 459, 467 (1966). It is important that the proper perspective be used in considering the invention in view of the prior art while conducting the obviousness/nonobviousness analysis. It is improper for an Examiner to use hindsight having read the Applicant’s disclosure to arrive at an obviousness rejection. *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q. 2d 1596, 1600 (Fed. Cir. 1988). It is improper to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992).

B. Claims 1-5, 7-13, and 15-17 are patentable over *Havens* in view of *Beebe*

Claim 1 recites, in part, “A computer-implementable method for importing external productivity data into a performance evaluation system, comprising ... storing a plurality of user-defined data elements for an evaluation process ... storing a user-defined configuration table for a data file comprising external productivity data associated with a telephony switch, the configuration table operable to identify external productivity data items in the data file and to map external productivity data items to data elements for the evaluation process ... mapping external productivity data items from the data file to the data elements based on the configuration table ... and inserting the external productivity data items into a plurality of productivity tables based on the mapping of the external productivity data items to the data elements, the external productivity data items inserted into the productivity tables capable of being used to calculate productivity scores for the evaluation process.” Applicants respectfully submit that the *Havens-Beebe* combination fails to teach, suggest, or disclose various aspects of Claim 1. A *prima facie* case of obviousness requires that each and every claim limitation be taught or suggested in the references and there be a suggestion or motivation to modify the reference. (See MPEP § 2143).

At the outset, Applicants respectfully traverse the Examiner’s assertion that *Havens* “shows all limitations excepting ‘(data) associated with a telephony switch.’” (Office Action, p. 3).

First, Applicants submit that the Examiner incorrectly equates generating a productivity assessment as taught by *Havens* with “mapping external productivity data” as recited by Claim 1. The present invention is directed toward a method for **importing** external productivity data into a performance evaluation system. In contrast, *Havens* is limited to **generating** a productivity assessment. (See *Havens*, Title; *id.*, Abstract; *id.*, c.1, ll. 7-9). There is no teaching within *Havens* for “inserting the external productivity data items into a plurality of productivity tables” and certainly no teaching for “mapping external productivity data items from the data file to the data elements based on the configuration table” as recited, in part, by Claim 1. The Examiner seems to assert that the “survey data” of *Havens* discloses the “external productivity data” of Claim 1. Instead, *Havens* teaches that the survey data is generated according to a predefined internal framework. For example,

Havens discloses “[u]sing one or more surveys, information criteria 4 and worker criteria 6 may be qualitatively assessed by the workers and others according to framework 2 in order to generate the survey data used in assessing the productivity of the workers.” (*Havens*, c. 3, ll. 41-45). *Havens* then discloses that “[u]sing framework 2, each surveyed worker associate qualitatively assesses worker criteria 6 and generates worker criteria ranks 52...” (*Havens*, c. 4, ll. 54-56). In yet another example, *Havens* teaches “[d]atabase 12 includes ... survey data 15 after survey data 15 has been suitably generated according to framework 2.” (*Havens*, c. 6, ll. 22-25). In other words, the *Havens* system includes an internal framework 2, which defines and determines the survey data. Accordingly, the *Havens-Beebe* combination does not teach, suggest, or disclose “inserting the external productivity data items into a plurality of productivity tables” as recited, in part, by Claim 1.

Second, even if the survey data in *Havens* discloses “external productivity data” as recited by Claim 1, which Applicants do not admit, the *Havens - Beebe* combination fails to teach “mapping external productivity data items from the data file to the data elements based on the configuration table” as recited, in part, by Claim 1. Instead, the retriever and segmentor of *Havens* relied on by the Examiner to show the claimed configuration table and mapping do not “identify external productivity data items in the data file and to map external productivity data items to data elements for the evaluation process.” Further, the retriever and segmentor do not “inserting the external productivity data items into a plurality of productivity tables based on the mapping of the external productivity data items to the data elements.” *Havens* simply asserts that data may be retrieved from a database “in any manner suitable” to allow assessments to be generated. (*Havens*, c. 7, ll. 2-3). Indeed, Applicants can find no teaching in *Havens* regarding any particular method or system for retrieving the data from the database. In addition, the passage cited by the Examiner to show mapping external productivity data items from the data file to the data elements based on the configuration table simply explains that the segmentor may segment survey data based on segmentation parameters. (*Havens*, c. 7, ll. 35-57).

Applicants further submit that, in *Havens*, because the survey data is generated according to a predefined “framework 2,” there is no need to map the survey data after it is generated, regardless of where the data is generated. Instead, the database in *Havens* is directly populated by the predefined ranks and weightings in the survey data, generated

according to the internal framework 2. (*See generally, Havens*, c. 6, l. 18 – c. 7, l. 21). For example, the Examiner relies on column 6, lines 11-14 of *Havens* to teach “external productivity data.” But the cited portion of *Havens* teaches “[t]he survey data may be generated in any suitable manner, for example, using bubble charts.” The use of bubble charts further evidences that the survey data is generated according to the predefined framework and any mapping using a configuration table would be redundant, and therefore non-obvious to one of ordinary skill in the art. (*See Havens*, c. 6, ll. 4-8). Therefore, the *Havens-Beebe* combination does not teach, suggest, or disclose “mapping external productivity data items from the data file to the data elements based on the configuration table” as recited in part, by Claim 1.

Not only does the *Havens-Beebe* combination not teach “mapping external productivity data items from the data file to the data elements based on the configuration table,” but if *Havens* were modified to allow such a capability, the “proposed modification would render the prior invention being modified unsatisfactory for its intended purpose,” and, therefore, “there is no suggestion or motivation to make the proposed modification.” (MPEP §2143.01). Also, the “proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified,” and, therefore, “the teachings of the references are not sufficient to render the claims *prima facie* obvious.” (MPEP §2143.01). As described above, the fundamental principle of *Havens* includes generating a productivity assessment based on survey data generated according to a predetermined framework. (*Havens*, Abstract). For example, *Havens* teaches that the survey data, which includes the predefined ranks, *must match predefined validation parameters*. (*See Havens*, c. 7, ll. 6-21). If the survey data is not validated, then the survey data ranks are deleted, processing terminated, new data is generated, or the survey data is modified. Modifying *Havens* to include “mapping external productivity data items from the data file to the data elements based on the configuration table,” as specifically recited by Claim 1, defeats any “predetermined format” as required by *Havens*. In this regard, the *Havens-Beebe* combination fails to teach, suggest, or disclose at least “mapping external productivity data items from the data file to the data elements based on the configuration table” as recited, in part, by Claim 1.

Applicants respectfully submit that the *Havens-Beebe* combination fails to teach, suggest, or disclose various aspects of Claim 1. Further, if *Havens* were modified to include the various aspects of Claim 1, the “proposed modification would render the prior invention being modified unsatisfactory for its intended purpose” and, therefore, “there is no suggestion or motivation to make the proposed modification.” For at least these reasons, Applicants respectfully submit that Claims 1-5, 7-13, and 15-17 are patentable over *Havens* in view of *Beebe*.

C. Claims 6 and 14 are patentable over *Havens* in view of *Beebe*

The *Havens-Beebe* combination further fails to teach, suggest, or disclose “the configuration table operable to identify a format for each of the data items,” as recited, in part, in Claim 6. The Examiner cites FIGURE 1 and column 6, lines 62-63 of *Havens* to reject Claim 6. (Final Office Action, p. 5). But the cited portions of *Havens* offer no information regarding a “configuration table,” let alone the configuration table “operable to identify a format for each of the data items.” Instead, FIGURE 1 of *Havens* “illustrates a knowledge worker productivity framework 2.” (*Havens*; col. 2, ll. 33-34). Further, column 6, lines 62-63 of *Havens* merely disclose that “[r]etriever 20 … places information and worker criteria ranks 50 and 52, respectively, in a format suitable for manipulation by system 10.” There is no teaching or suggestion in *Havens* that retriever 20 (which the Examiner asserts is the “configuration table”) identifies the format of survey data 15 (which the Examiner claims is the “external productivity data”). Indeed, given that “*survey data 15 has been suitably generated according to framework 2*,” there appears to be no reason to identify the format of a survey data item generated according to a predefined framework. (*Havens*, c. 6, ll. 22-25). In short, the cited portions of *Havens* simply fail to disclose “the configuration table operable to identify a format for each of the data items.” (See *Havens*, FIG. 1; col. 6, ll. 62-63). For at least these reasons, Applicants respectfully submit that the *Havens-Beebe* combination fails to teach, suggest, or disclose the combination of limitations specifically recited in Claims 6 or 14.

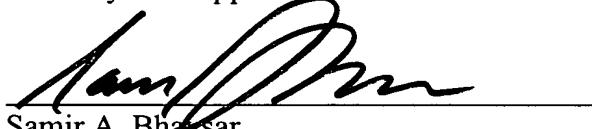
CONCLUSION

Applicants have demonstrated that the present invention as claimed is distinguishable over *Havens* in view of *Beebe*. Therefore, Applicants respectfully request the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

A check in the amount of \$320.00 is attached to cover the statutory filing fee. Although no other fee is believed to be due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

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Dated May 7, 2003

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Enclosures: Appendix A – Claims on Appeal
Appendix B – Copy of U.S. Patent No. 5,909,669 issued to *Havens*
Appendix C – Copy of U.S. Patent No. 4,276,451 issued to *Beebe et al.*

Appendix A – Claims on Appeal

1. A computer-implementable method for importing external productivity data into a performance evaluation system, comprising:

storing a plurality of user-defined data elements for an evaluation process;

storing a user-defined configuration table for a data file comprising external productivity data associated with a telephony switch, the configuration table operable to identify external productivity data items in the data file and to map external productivity data items to data elements for the evaluation process;

mapping external productivity data items from the data file to the data elements based on the configuration table; and

inserting the external productivity data items into a plurality of productivity tables based on the mapping of the external productivity data items to the data elements, the external productivity data items inserted into the productivity tables capable of being used to calculate productivity scores for the evaluation process.

2. The method of Claim 1, the configuration table further operable to associate a data item with a member of the performance evaluation system.

3. The method of Claim 1, wherein the data file is a delimited file.

4. The method of Claim 1, wherein the data file is not a delimited file and further comprising:

storing a preprocessor file operable to generate a delimited file from the data file; and
using the preprocessor file to generate the delimited file from the data file.

5. The method of Claim 1, further comprising the configuration table operable to identify a type for each of the data items.

6. The method of Claim 1, further comprising the configuration table operable to identify a format for each of the data items.

7. A computer-implementable performance evaluation system, comprising:
 - a first database table operable to store a plurality of user-defined data elements for an evaluation process;
 - a second database table operable to store configuration information for importing a data file comprising external productivity data associated with a telephony switch into the performance evaluation system, the configuration information operable to identify external productivity data items in the data file and to map external productivity data items to data elements for the evaluation process; and
 - a third database table operable to store productivity data, at least a portion of the productivity data comprising external productivity data items inserted into the third database table based on the mapping of the external productivity data items to the data elements, the productivity data capable of being used to calculate productivity scores for the evaluation process.
8. The performance evaluation system of Claim 7, further comprising a configuration including the configuration information and an identifier for associating a data item to a member of the performance evaluation system.
9. The method of Claim 1, further comprising receiving the data file from an external device.
10. The method of Claim 9, wherein the external device comprises a telephony switch.
11. The system of Claim 7, wherein the data file is a delimited file.
12. The system of Claim 7, wherein the data file is not a delimited file and further comprising a preprocessor file operable to generate a delimited file from the data file.
13. The system of Claim 7, the configuration information further operable to identify a type for each of the data items.

14. The system of Claim 7, the configuration information further operable to identify a format for each of the data items.

15. The system of Claim 7, wherein the data file is operable to be received from an external device.

16. The system of Claim 15, wherein the external device comprises a telephony switch.

17. A computer-implementable method for importing external productivity data into a performance evaluation system, comprising:

storing a plurality of user-defined data elements for an evaluation process;

storing a user-defined configuration table for a data file comprising external productivity data associated with a telephony switch, the configuration table operable to identify external productivity data items in the data file, to map external productivity data items to data elements for the evaluation process, to associate a data item with a member of the performance evaluation system, to identify a type for each of the data items, and to identify a format for each of the data items;

receiving the data file from an external device, the external device comprising a telephony switch;

mapping external productivity data items from the data file to the data elements based on the configuration table; and

inserting the external productivity data items into a plurality of productivity tables based on the mapping of the external productivity data items to the data elements, the external productivity data items inserted into the productivity tables capable of being used to calculate productivity scores for the evaluation process.